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under this section as income earned by the assignor.

§ 1463.112 Successor in interest contracts.

(a) A quota holder or tobacco producer who is eligible to receive a payment under this part, and for whom a claim has not been established by the United States, may enter into a successor in interest contract with another party using the correct CCC form. Such successor in interest contract will become effective upon approval by CCC, and will not include the 2005 payment. Only one such successor in interest contract may be entered into by a quota holder or tobacco producer with respect to a farm for each kind of tobacco.

(b) Annually, CCC will establish, after consultation with the Department of the Treasury, a discount rate that reflects the value of any remaining payments due under this part if such payments were to be made as a lump sum payment in the current year. This discount rate will be determined as provided in §1463.111(d)(2). Unless there is consideration for such contract in an amount equal to or greater than the discounted value of the payments, subject to the successor in interest or contract, based on the discount rate established for such payments by CCC, CCC will not approve any succession in interest contract other than to:

(1) A family member; or

(2) A party who had purchased a tobacco marketing quota prior to October 22, 2004 and had placed the quota on a farm with the owner's consent prior to that date in the manner that had been prescribed by FSA under part 723 of this chapter.

(c) CCC will issue a payment, except the 2005 payment, to a successor party only if such party is otherwise in compliance with all other applicable regulations, which includes for successors to producer contracts only the wetlands and highly erodible land provisions of part 12 of this chapter. In accordance with part 1403 of this title, any claim owed by the successor party to the United States will be deducted from any payment made under this part prior to the issuance of the payment to the successor party.

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(d) CCC will report to the Internal Revenue Service any payment made under a successor in interest contract as income earned by the successor party.

§ 1463.113 Issuance of payments in event of death.

If a quota holder or tobacco producer who is eligible to receive a payment under this subpart dies, the right to receive payments shall be transferred to the estate of the quota holder or tobacco producer unless such person is survived by a spouse or one or more dependents, in which case the right to receive the payments shall be transferred to the surviving spouse.

§ 1463.114 Appeals.

A person may obtain reconsideration and review of any adverse determination made under this subpart in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart C—Miscellaneous Provisions

§ 1463.201 Refunds of importer assessments.

Assessments paid on imported flue-cured or burley tobacco under sections 106A and 106B of the Agricultural Act of 1949 with respect to imports in the 2004 and prior marketing years may be refunded by CCC in accordance with the provisions of 7 CFR 1464.105 that were in effect prior to March 30, 2005, so long as such request for refunds are filed in accordance with such part no later than:

(a) August 1, 2005 for flue-cured tobacco; and

(b) November 1, 2005 for burley tobacco.

[70 FR 17159, Apr. 4, 2005]

PART 1465—AGRICULTURAL MANAGEMENT ASSISTANCE

Subpart A—General Provisions

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AUTHORITY: 7 U.S.C. 1524(b), 16 U.S.C. 3801.

SOURCE: 68 FR 17273, Apr. 9, 2003, unless otherwise noted.

Subpart A—General Provisions

§ 1465.1 Purposes and applicability.

Through the Agricultural Management Assistance (AMA) program, the NRCS provides financial assistance funds annually to producers in 15 statutorily designated states to construct or improve water management structures or irrigation structures; to plant trees to form windbreaks or to improve water quality; and to mitigate risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming. The AMA Program is applicable in Connecticut, Delaware, Maryland, Massachusetts, Maine, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming.

§ 1465.2 Administration.

(a) Administration and implementation of the conservation provisions of AMA Program for the CCC is assigned to the Natural Resources Conservation Service (NRCS). The Farm Service Agency (FSA) is responsible for 'person' determinations under §1465.23(c) and making cost-share payments.

(b) NRCS will:

(1) Provide overall management and implementation leadership for the AMA Program;

(2) Establish policies, procedures, priorities, and guidance for implementation;

(3) Establish cost-share payment limits;

(4) Determine eligible practices;

(5) Develop and approve conservation plans and contracts with selected participants;

(6) Provide technical leadership for implementation, quality assurance, and evaluation of performance; and

(7) Make funding decisions and determine allocations of AMA funds.

(c) FSA will:

(1) Determine 'person' and producer eligibility; and

(2) Make cost-share payments for practices completed.

§ 1465.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Applicant means an agricultural producer who has requested in writing to participate in the AMA Program. Producers who are members of a joint operation shall be considered one applicant.

Chief means the Chief of NRCS, or designee.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of the participant's decisions, and supporting information, for treatment of a unit of land or water, and includes the schedule of operations, activities, and estimated expenditures needed to solve identified natural resource concerns.

Conservation practice means a specified treatment, such as a structural or vegetative practice or a land management practice, which is planned and

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applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the AMA Program.

Cost-share payment means the financial assistance from NRCS to the participant to share the cost of installing eligible practices.

Designated conservationist means an NRCS employee whom the State conservationist has designated as responsible for administration of the AMA Program.

Indian tribe means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special assistance and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which the United States holds title as trustee for an Indian or tribal beneficiary, or a Indian or tribal beneficiary holds title and the United States maintains a trust relationship.

Life-span means the minimum time period in which the conservation practices are to be maintained and used for their intended purpose.

Liquidated damages means a sum of money stipulated in the contract that the participant agrees to pay if the participant breaches the contract. The sum represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Operation and maintenance means work that is to be performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means a producer who is a party to an AMA contract.

Producer means a person who is engaged in agricultural production.

Secretary means the Secretary of the United States Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Technical assistance means the personnel and support resources needed to conduct conservation practice survey, layout, design, installation, and certification; training and providing quality assurance for professional conservationists; and evaluation and assessment of the AMA Program.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

§ 1465.4 Program requirements.

(a) Participation in the AMA Program is voluntary. The participant, in cooperation with the local conservation district, applies for practice installation for the farm or ranching unit of concern. The NRCS provides cost-share payments through contracts to apply needed conservation practices within a time schedule specified in the contract.

(b) The Chief determines the funds available for financial assistance according to the purpose and projected cost for which the financial assistance is provided in a fiscal year. The Chief allocates the funds available to carry out the AMA Program.

(c) To be eligible to participate in the AMA Program, an applicant must:

(1) Be an agricultural producer;

(2) Have control of the land for the life of the proposed contract period, except that:

(i) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; or

(ii) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide NRCS with the written concurrence of the landowner in order to apply an eligible practice(s);

(3) Submit an application form CCC-1200;

(4) Supply information as required by NRCS to determine eligibility for the AMA Program; and

(5) States, political subdivisions, and entities thereof will not be persons eligible for payment. Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment.

(d) Land may only be considered for enrollment in the AMA program if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is under private control for the contract period and is included in the participant's operating unit;

(ii) Conservation practices will contribute to an improvement in the identified natural resource concern; and

(iii) The participant has provided NRCS with written authorization from the government landowner to apply the conservation practices; or

(3) The land is federally recognized Tribal, BIA allotted, or Indian trust land.

§ 1465.5 Conservation practices.

(a) The State Conservationist, with advice from the State Technical Committee, will determine the conservation practices eligible for AMA Program payments. To be considered eligible conservation practices, the practices must meet the purposes of the AMA as set out in §1465.1.

(b) The conservation plan includes the schedule of operations, activities, and estimated expenditures of the practices needed to solve identified natural resource concerns.

Subpart B—Contracts

§ 1465.20 Applications for participation and selecting applications for contracting.

(a) Any producer who has eligible land may submit an application for

participation in the AMA Program at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation.

(b) NRCS will accept applications throughout the year. The State Conservationist will distribute information on the availability of assistance and the state-specific goals. Information will be provided that explains the process to request assistance.

(c) The State Conservationist, with advice from the State Technical Committee, will develop ranking criteria and a ranking process to select applications, taking into account local and state priorities.

(d) The State Conservationist or designated conservationist with advice from the State Technical Committee and using a locally led process will rank and select applications for contracting based on the state-developed ranking criteria and ranking process.

(e) The State Conservationist or designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria.

§ 1465.21 Contract requirements.

(a) In order for a participant to receive cost-share payments, the participant shall enter into a contract agreeing to implement eligible conservation practices.

(b) An AMA contract will:

(1) Incorporate by reference all portions of a unit applicable to the AMA Program;

(2) Be for a duration of 3 to 10 years;

(3) Incorporate all provisions as required by law or statute, including participant requirements to:

(i) Not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the contract according to §1465.25;

(ii) Refund any AMA Program payments received with interest, and forfeit any future payments under the AMA Program, on the violation of a term or condition of the contract, consistent with the provisions of §1465.25;

(iii) Refund all AMA Program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the

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transferee of the right and interest agrees to assume all obligations of the contract, consistent with the provisions of § 1465.24; and

(iv) Supply information as required by NRCS to determine compliance with the contract and requirements of the AMA Program.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of § 1465.22; and

(5) Any other provision determined necessary or appropriate by NRCS.

(c) The participant must apply the practice(s) according to the schedule set out in the contract or conservation plan.

§ 1465.22 Conservation practice operation and maintenance.

The contract will incorporate the operation and maintenance of the conservation practice(s) applied under the contract. The participant must operate and maintain the conservation practice(s) for its intended purpose for the life span of the conservation practice, as identified in the contract or conservation plan, as determined by NRCS. NRCS may periodically inspect the conservation practices during the life span of the practices as specified in the contract to ensure that operation and maintenance is occurring.

§ 1465.23 Cost-share payments.

(a)(1) The Federal share of cost-share payments to a participant will be 75 percent of the actual cost of an eligible practice. In no instance shall the total financial contributions for an eligible practice from all public and private entity sources exceed 100 percent of the actual cost of the practice.

(2) Participants may contribute their portion of the costs of practices through in-kind contributions, including labor and materials, providing the materials contributed meet the NRCS standards and specifications for the practice being installed.

(3) Cost-share payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the contract.

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(b) The total amount of cost-share payments paid to a person under this part may not exceed \$50,000 for any fiscal year.

(c) For purposes of applying the payment limitations provided for in this section, NRCS will use the provisions in 7 CFR part 1400 related to the definition of a "person" and the limitation of payments, except that:

(i) The provisions in part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment, will not apply.

(ii) With respect to land under an AMA Program contract which is inherited during the contract period, the \$50,000 fiscal year limitation will not apply to the extent that the payments from any contracts on the inherited land cause an heir, who was party to an AMA Program contract on other lands prior to the inheritance, to exceed the annual limit.

(iii) With regard to contracts on tribal land, Indian trust land, or BIA allotted land, payments exceeding one limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the limitation.

(iv) The status of an individual or entity on the date of the application shall be the basis on which the determination of the number of persons involved in the farming operation is made.

(d) The participant and NRCS must certify that a conservation practice is completed in accordance with the contract before NRCS will approve the payment of any cost-share payment.

§ 1465.24 Contract modification, extension, and transfer of land.

(a) The participant and NRCS may modify a contract if the participant and NRCS agree to the contract modification.

(b) Contracts that run less than ten years may be extended for up to the 10-year limit in order for the participant to complete the practices scheduled in

the contract, if such extension is requested by the participant before the contract expires.

(c) The parties may mutually agree to transfer a contract to a new participant. The transferee must be determined by NRCS to be eligible to participate in the AMA Program and shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(d) NRCS may require a participant to refund all or a portion of any assistance earned under the AMA Program if the participant sells or loses control of the land under an AMA Program contract and the new owner or controller is not eligible to participate in the AMA Program or refuses to assume responsibility under the contract.

§ 1465.25 Contract violations and termination.

(a)(1) If NRCS determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the State Conservationist may terminate the AMA Program contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by the State Conservationist that the participant has submitted false information or filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of § 1465.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If NRCS terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest determined in accordance with part 1403 of this chapter. The State Conservationist has the option of requiring only

partial refund of the payments received if the State Conservationist determines that a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If NRCS terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. The State Conservationist will have the option to waive the liquidated damages depending upon the circumstances of the case.

(3) When making all contract termination decisions, NRCS may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract if NRCS agrees based on NRCS's determination that termination is in the public interest.

(5) In carrying out NRCS's role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration

§ 1465.30 Appeals.

(a) A participant may obtain administrative review of an adverse decision under the AMA Program in accordance with parts 11 and 614 of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) Funding allocations;

(3) Eligible conservation practices; and

(4) Other matters of general applicability, including:

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- (i) Technical standards and formulas;
- (ii) Denial of assistance due to lack of funds or authority; or
- (iii) Science-based formulas and criteria.

§ 1465.31 Compliance with regulatory measures.

Participants who carry out conservation practices will be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1465.32 Access to operating unit.

Any authorized NRCS representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance, inspect any work undertaken under the contract and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative will make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1465.33 Performance based upon advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of NRCS, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of the AMA Program and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

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§ 1465.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found in part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1465.35 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting an AMA Program determination made in accordance with this part shall not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer's interest in all contracts shall be terminated, and the producer shall refund to NRCS all payments, plus interest determined in accordance with part 1403 of this chapter, received by such producer with respect to all contracts if it is determined that the producer knowingly:

- (1) Adopted any scheme or device that tends to defeat the purpose of the AMA Program;
- (2) Made any fraudulent representation; or
- (3) Misrepresented any fact affecting an AMA Program determination.

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

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